D.B. CIVIL SPECIAL APPEAL (W) NO.101/2007

Balwant Singh Bhari
Vs.
Durga Shankar

Date of Order :: 29-11-2007

HON'BLE THE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. GR Punia, for the appellant.
Mr. Sandeep Mehta, for the respondent.

Heard learned counsel for the parties.

The appeal is directed against the order of the learned Single Judge dated 23.8.2007 finding the appellant guilty of committing contempt of court for breach of the order passed by the learned Additional Sessions Judge, Abu Road dated 12.4.2007 by which he declined to accept the bail application submitted by the respondent, who was to remain present on 16.4.2007 and punished him for seven days imprisonment.

Facts of the case are that the respondent accused in Criminal Original Case No.577/2001 has remained absent on 9.3.2007 on which date his application for exemption from attendance was accepted and thereafter matter was fixed for pronouncement of judgment on 15.3.2007. The accused remained again absent on 15.3.2007. In these

circumstances, the bail of the accused was cancelled by the learned Additional Sessions Judge and proceedings under Section 446 Cr.P.C. were initiated.

The order dated 15.3.2007 was subjected to revision before the learned Additional Sessions Judge, Abu Road whereby by order dated 12.4.2007 the learned Judge set-aside the order dated 15.3.2007 and directed the accused to appear before the trial court on 16.4.2007 and file bail bonds as directed and reply to proceeding under Sec. 446 Cr.P.C. and the trial court was directed to decide the case in accordance with law according to his own discretion.

In furtherance of this direction, the accused appeared before the trial court on 16.4.2007 and presented his application for bail. After hearing the bail application, the same was again rejected by the trial court on 16.4.2007.

This aforesaid decision dated 16.4.2007 led to filing contempt petition against the learned Judicial Magistrate which has culminated in the order under appeal.

Having perused three orders and order passed by the revisional court in particular, we

find that the order was not directed to release the accused on bail by accepting the bail bonds. No direction was issued by the learned Additional Sessions Judge for releasing the accused on bail on furnishing bail bonds in specified sum but it left the same to be decided by the trial judge.

We further find that in pursuance of such direction, a fresh bail application was filed by the accused which was required to be decided afresh by the learned trial judge.

Merely because the order rejecting the bail in opinion of Supreme Court may be erroneous, the trial judge cannot be held guilty for committing contempt of court by violating any direction issued by the revisional court. The order of the learned Additional Sessions Judge dated 12.4.2007 cannot be read in any sense of the term that this was an order for granting bail on accepting bail bonds in specified sum. May be from the tenor of the order at best it should be inferred that without finding any cogent reason merely for the absence of accused on 15.3.2007 the cancellation of bail bonds was not justified but in absence of any direction to release the accused on first using the bail bonds by the learned Additional Sessions Judge but considering general direction issued by the learned Additional Sessions Judge to pass the trial orders in

accordance with law and the trial court has passed a fresh order in his discretion what he considered to be justified, it cannot be considered to be act of willful disobedience of the direction issued by the learned Additional Sessions Judge.

We are of the opinion that no case for finding the appellant guilty of willful disobedience of the directions issued by the revisional court is made out which can be set-aside. It is willful disobedience which can be visited with punishment to custody. Merely passing erroneous order in exercise of discretion it is not justified to make the Magistrate liable for committing contempt of court of the order passed by the revisional court.

Even otherwise we also notice that the learned Magistrate has tendered unconditional apology which, in the aforesaid circumstances, was liable to be accepted by the learned Single Judge.

Accordingly, the special appeal is allowed and the judgment under appeal is set-aside. Notices are discharged.

[BHANWAROO KHAN],J. [RAJESH BALIA],ACTG.CJ.

RM/